



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 416

IN THE MATTER OF ELLIOT BURLINGAME

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Elliot Burlingame (Mr. Burlingame) pursuant to Section 5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On April 12, 1989, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Mr. Burlingame. The Commission has concluded its inquiry and, on December 12, 1990, by a majority vote, found reasonable cause to believe that Mr. Burlingame violated G.L. c. 268A.

The Commission and Mr. Burlingame now agree to the following findings of fact and conclusions of law:

1. Mr. Burlingame is, and was during the time here relevant, a builder and developer in Charlton. For several years ending in May 1988, Mr. Burlingame was also a member and the chairman of the Charlton Board of Health (Board of Health). As a member and chairman of the Board of Health, Mr. Burlingame was a municipal employee as that term is defined in G.L. c. 268A, §1(g).
2. Cynthia B. Cobb (Ms. Cobb) was, during the time here relevant, the health agent for the Board of Health. As health agent, Ms. Cobb was a municipal employee as that term is defined in G.L. c. 268A, §1(g). Ms. Cobb resigned as health agent in 1991.
3. Ms. Cobb was appointed as health agent in late 1985. Mr. Burlingame participated in Ms. Cobb's hiring as a member and chairman of the Board of Health. Ms. Cobb's municipal position was full-time and salaried.
4. As health agent, Ms. Cobb was responsible for witnessing percolation tests of land pursuant to Title V of the State Sanitary Code and the provisions of the Charlton Sanitary Code. Ms. Cobb also had official responsibility for reviewing septic system plans submitted to the Board of Health for approval and for making recommendations to the Board concerning those plans. In addition, Ms. Cobb as health agent inspected septic systems for compliance with the approved plans prior to their being covered and also inspected and signed the occupancy permits for newly constructed houses on behalf of the Board of Health.
5. From December 1985 through May 1988, Mr. Burlingame as a Board of Health member was Ms. Cobb's employer and a supervisor of her work as health agent. During the same period, Ms. Cobb as health agent participated in numerous official Board of Health matters affecting Mr. Burlingame's interests as a developer, including the review and approval of septic systems designs, the witnessing of percolation tests and inspection and signing of occupancy permits for houses constructed in Charlton by Mr. Burlingame.
6. In September 1986, Ms. Cobb became a tenant in an apartment building owned by Mr. Burlingame on Ram's Horn Road in Charlton. In approximately March 1987, Mr. Burlingame sold the Ram's Horn Road apartments. In May 1987, Ms. Cobb moved from Ram's Horn Road to an apartment on Carroll Hill Road in

Charlton, not owned by Mr. Burlingame.

7. By early 1987, Mr. Burlingame and Ms. Cobb discussed a “package deal” pursuant to which he would sell her a lot of land and build her a house for a below-market price that she could afford to pay. By February 1987, Mr. Burlingame and Ms. Cobb were actively considering a lot of land (Lot 12) on Morton Station Road in Charlton owned by Mr. Burlingame as the potential site for Ms. Cobb’s house. By mid-1987, Mr. Burlingame and Ms. Cobb had a mutual understanding that he would construct for her and sell to her a house on Lot 12 at a below-market price that she could afford.

8. At the time Mr. Burlingame and Ms. Cobb first considered Lot 12, the lot lacked the road frontage required for a house to be built on it. On July 28, 1987, Mr. Burlingame purchased Lot A Morton Station Road (Lot A) to provide the required road frontage to make Lot 12 buildable. Mr. Burlingame paid \$5,000 for Lot A and agreed to reroof the lot owner’s house as additional payment for the lot. Mr. Burlingame then combined Lot 12 and Lot A into a single house lot of approximately 66,706 square feet, designated as 12 Morton Station Road.

9. In January 1988, Mr. Burlingame applied for a building permit to construct a house at 12 Morton Station Road. Between January 1988 and June 1988, Mr. Burlingame, his employees and contractors constructed a two bedroom, one-and-one-half bath cape style woodframe house at 12 Morton Station Road. The land and construction costs for the house exceeded \$45,000.

10. On June 24, 1988, Mr. Burlingame transferred ownership of the 12 Morton Station Road house and land to Ms. Cobb for the recited consideration of \$60,000. In connection with the transaction, no downpayment was made by Ms. Cobb and Mr. Burlingame provided Ms. Cobb with 100% financing of the purchase price. Mr. Burlingame retained a \$60,000 mortgage on the property at a 10% annual fixed rate of interest for 30 years. Under the terms of the mortgage, the mortgage interest is, however, charged only on \$45,000 of the mortgage principal amount; and the agreement between Mr. Burlingame and Ms. Cobb provides that \$15,000 of the \$60,000 mortgage principal indebtedness will be forgiven if Ms. Cobb does not sell the property prior to the year 2008.

11. At the time Mr. Burlingame transferred ownership of the house and land at 12 Morton Station Road to Ms. Cobb, the property was worth substantially more than the purchase price paid by Ms. Cobb.

12. Between mid-1987 and mid-1988, Ms. Cobb as health agent inspected at least twelve new homes in Charlton built by Mr. Burlingame as a private developer and signed occupancy permits on behalf of the Board of Health for each of the homes.

13. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act in his official position as a result of kinship, rank, position or undue influence of any party or person.

14. By, while he was simultaneously a Board of Health member with supervisory authority over Ms. Cobb and a private developer subject to Ms. Cobb’s official authority as the health agent, entering into an understanding with Ms. Cobb that he would sell her a house and land for a below-market price, Mr. Burlingame acted, knowingly or with reason to know, in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that he could be unduly influenced by Ms. Cobb and/or that Ms. Cobb could unduly enjoy his favor in the performance of his official duties as a member of the Board of Health. In so doing, Mr. Burlingame violated G.L. c. 268A, §23(b)(3).

In view of the foregoing violation of G.L. c. 268A by Mr. Burlingame, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Mr. Burlingame:

1. that Mr. Burlingame pay to the Commission the sum of two thousand dollars (\$2,000.00) as a civil penalty for violating G.L. c. 268A, §23(b)(3); and
2. that Mr. Burlingame waive all rights to contest the findings of fact, conclusions of law and terms and

conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

Date: April 27, 1992